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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JERI L. CALLAWAY, WILLIAM CALDWELL CROSSWY and
PHILIP H. DORAGH

Appeal 2009-004530
Application 10/038,202
Technology Center 2100

Decided: April 16, 2010

Before JAY P. LUCAS, THU A. DANG, and JAMES R. HUGHES,
Administrative Patent Judges.

DANG, *Administrative Patent Judge.*

DECISION ON REQUEST FOR REHEARING

Appeal 2009-004530
Application 10/038,202

I. STATEMENT OF THE CASE

Appellants have filed a Request for Rehearing under 37 C.F.R. § 41.52(a)(1)(hereinafter “Request”) on February 2, 2010, for reconsideration of our Decision mailed December 2, 2009 (hereinafter “Decision”).

The Decision affirmed the Examiner’s rejection of claims 1, 2, 4-22, 24-32, and 44-50 under 35 U.S.C. § 103(a).

We have reconsidered our Decision of December 2, 2009, in light of Appellants’ comments in the Request for Rehearing, and we find Appellants have not identified any points misapprehended or overlooked by the Board in our Decision therein. We decline to change our prior Decision for the reasons discussed *infra*.

II. ISSUES

We address the following contentions raised by Appellants’ in the Request:¹

Appellants contend that “the Board has misapplied the relevant law” because “the recitations of independent claims 1 and 13 of ‘work-related matters,’ ‘family-related matters,’ and ‘a merger of the family-related matters and the work-related matters’ do not themselves require [the] import

¹ Arguments not raised in the Briefs before the Board and evidence not previously relied upon in the Brief and any Reply Brief(s) are not permitted in the Request for Rehearing except as permitted by paragraphs (a)(2) and (a)(3) of this section. 37 C.F.R. ¶ 41.52(a)(1).

of matter from the specification to be properly interpreted” (Request 3). In particular, Appellants contend that the terms “may be given their plain meaning” (*id.*). Accordingly, Appellants contend that “in interpreting the terms ‘work-related matters’ and ‘family related matters’ by giving the terms their plain meaning, the proper interpretation of ‘work-related matters’ includes only work-related matters, while the proper interpretation of ‘family-related matters’ includes only family-related matters” (Request 4). This contention is specifically directed to independent claims 1 and 13.

The issue we address on this Request is whether Appellants identified that the Board has misapplied the relevant law and misapprehended the Appellants’ argument by misconstruing a “calendaring program” that is “adapted to provide at least one calendar corresponding to family-related matters, at least one calendar corresponding to work-related matters, and at least one calendar corresponding to a merger” (emphasis added) as recited in claim 1 and similarly recited in claim 13.

III. ANALYSIS

As set forth in our Decision, “Appellants’ claims simply do not place any limitation on what the term ‘calendar’ is to be, is to represent, or is to mean, other than that at least one calendar corresponds ‘to work-related matters,’ ‘to family-related matters,’ or a ‘merger’” (Decision 8-9). Accordingly, we find that “the calendars cannot be confined to a specific embodiment when the claims do not recite a specific embodiment” and “we

interpret a ‘calendar’ as a schedule of events” (Decision 9; emphasis added). Thus, contrary to Appellants’ contention, as set forth in our Decision, we interpret “calendar” and not “work-related matters,” “family-related matters,” and “a merger of the family-related matters and the work-related matters” without importing matter from the specification. That is, we interpret “calendar” as a schedule of events, consistent with its plain meaning, without confining the claim with specific embodiments described in the specification.

As set forth in our Decision, since claim 1 merely requires that the calendaring program of claim 1 “is adapted to provide” the various calendars, “we interpret claim 1 as merely requiring a calendaring program that is capable of providing various calendars” as defined in claim 1 (*id.*). Thus, we interpret claim 1’s calendaring program as capable of “providing a schedule of events for a first matter, a schedule of events for a second matter, and a schedule of events of a merger” by giving it its plain meaning without importing matter from the specification (*id.*).

Furthermore, as noted in the Decision, “Appellants appear to be arguing that the applied references fail to disclose distin[c]tly displayed ‘work-related,’ ‘family-related,’ and ‘merged’ calendars” (Decision 10). That is, Appellants appear to limit the definition of “calendars” to schedules of events that are distinctly displayed and, thus, appear to be arguing that the “work-related,” “family-related,” and “merged” calendars of the claimed invention differ from the schedule of events of the applied reference because

the claimed calendars must be distinctly displayed in separate and distinct displays. However, as we set forth in our Opinion, “claim 1 does not recite any such requirement of a display of the calendars” (*id.*). Thus, we interpret the calendars corresponding to “work-related,” “family-related,” and “merged” matters of claim 1 as any group of schedules of events, displayed or not displayed, corresponding to the various matters. That is, we will not import matter from the specification to limit the calendars as recited in claim 1 to only schedule of events that are distinctly displayed for the separate and distinct matters, as Appellants apparently contend.

As to Appellants’ argument that “in interpreting the terms ‘work-related matters’ and ‘family related matters’ by giving the terms their plain meaning, the proper interpretation of ‘work-related matters’ includes only work-related matters, while the proper interpretation of ‘family-related matters’ includes only family-related matters” (Request 4), as set forth in our Decision, “claim 1 does not recite any such ‘only’... language” (*id.*). We find no error in the Examiner’s finding that claim 1 does not preclude Raff’s calendars which “‘may contain information more than just work information,’ because the calendars ‘contain work related matters which [are]not prohibited by the current claim language’” (*id.*, citing Ans. 14). In fact, claim 1 merely requires that the calendaring program is “adapted to provide at least one calendar corresponding to family-related matters, at least one calendar corresponding to work-related matters, and at least one calendar corresponding to a merger” (emphasis added). Thus, we correctly

interpreted claim 1 to require that the calendaring program be “capable” of providing a schedule of events “corresponding to” work-related, family-related or a merger of matters as defined by Appellants’ claims (Decision 9). That is, we give the terms “adapted to provide” calendars “corresponding to” the various matters their broadest reasonable interpretation as capable of providing schedules of events, displayed or not displayed, “corresponding to” the various matters while not precluding the inclusion of other matters, as defined by the claims and consistent with its plain meaning. Thus, while we will not import matter from the specification in interpreting the claims in our Decision, we nonetheless relied upon the definition of the term provided in Appellants’ claim, and we considered the ordinary meaning of the term to construe the cited term (Decision 10).

Thus, we do not agree that we misapplied the relevant law and misapprehended the Appellants’ argument by interpreting a “calendaring program” as defined by the claims and consistent with its plain meaning in our Decision. Accordingly, Appellants’ Request does not persuade us to modify our Decision. Therefore, we find Appellants’ arguments unavailing.

IV. CONCLUSION

We have carefully considered the arguments raised by Appellants in the Request for Rehearing, but none of these arguments are persuasive that our original Decision was in error. We are still of the view, that the invention set forth in claims 1, 2, 4-22, 24-32, and 44-50 is unpatentable

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over the applied prior art based on the record before us in the original appeal. This Decision on Appellants' Request for Rehearing is deemed to incorporate our earlier Decision (mailed December 2, 2009) by reference. *See 37 C.F.R. § 41.52(a)(1).*

V. DECISION

We have granted Appellants' request to the extent that we have reconsidered our Decision of December 2, 2009, but we deny the request with respect to making any changes therein.

REHEARING DENIED

peb

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